

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FRANK J. BIFULCO,

Petitioner,

v.

06-CV-684-A

01-CR-192-A

UNITED STATES OF AMERICA,

Respondent.

ORDER

_____**ON THE GOVERNMENT'S MOTION**, and for the reasons set forth therein, it is

ORDERED that on or before December 29 , 2006, the petitioner's former counsel, Anthony J. Lana ("Lana"), shall file and serve an affidavit that directly addresses the claims set forth in Issue 1A, "Denial of Petitioners Constitutional Right To Testify" (pages 6-80) of the Motion Pursuant to Title 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Federal Sentence ("Petitioner"), and the petitioner's supporting affidavit and it is further

ORDERED that said affidavit shall be served on both the government and the petitioner, Frank J. Bifulco, and it is further

ORDERED that the petitioner, Frank J. Bifulco, may respond to the facts set forth in the Lana affidavit within thirty (30) days after said affidavit is initially filed with the Court and served on the government, and it is further

ORDERED that, in the event the petitioner chooses not to reply to the Lana Affidavit, within thirty (30) days after his receipt of the Lana Affidavit, the petitioner shall file a pleading with the Court and serve a copy of that pleading on the government notifying the Court and the government that he will not be filing a response.

ORDERED that the government shall file its response to the Petition within thirty (30) days after the petitioner serves and files his response (if any) to the Lana Affidavit, or his pleading indicating he will not respond.

IT IS SO ORDERED.

/s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: November 7 , 2006